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SUBCOMMITTEE ON ELECTIONS

VOTER REGISTRATION AND LIST MAINTENANCE (continued)

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Thank you, Mr. Chairman, for the opportunity to testify this morning before this Subcommittee.

My name is J. Gerald Hebert. I am the executive Director and Director of Litigation at the campaign Legal Center in Washington, DC. From 1973 to 1994, I served as an attorney in the Civil Rights Division, with 15 of those years in Voting Section, where I served in a number of supervisory capacities, including Acting Chief and Deputy Chief for Litigation. I am here today to talk about two issues in particular: vote caging and the enforcement of the National Voter Registration Act (NVRA).

Vote Caging: The Vote Suppression Weapon Of Choice In 2004:

Conspiracies to stop African-Americans from exercising their constitutional right to vote aren't new – and neither is vote caging. The Republican National Committee has been under a federal consent decree not to engage in the practice since getting caught in the 1981 gubernatorial election in New Jersey. Despite the injunction, which remains in effect, vote caging schemes continue to be used as an integral part of an ongoing campaign to suppress minority voting rights.[1]

Vote Caging, in this context, involves sending out non-forwardable or registered mail to targeted groups of voters and compiling "caging lists" of voters whose mail is returned for any reason. Although the National Voter Registration Act (NVRA) prohibits election officials from canceling the registration of voters merely because a single piece of mail has been returned, Republican operatives have used the lists for many years in caging operations to challenge the voting rights of thousands of minority and urban voters nationwide on the basis of the returned mail alone.

With these lists in hand, they use the media for aggressive campaigns to create the illusion that the returned mail is evidence of mass voter fraud. They then use these caging lists to challenge the voting eligibility of thousands of African Americans and Democrats.

To bring these schemes to an end will require vigorous prosecution by the United States Department of Justice. But the Department's priorities have shifted over the years, with the Justice Department under this Administration not only ignoring vote caging schemes, but actively working to give them a boost in the courts.

Contrast, for example, the Department of Justice's efforts in 1990 in North Carolina under President George H.W. Bush to the current Bush Justice Department's

[1] In Attachment A to this written statement, I have set forth a list of vote caging activities over the past three decades.

actions in the 2004 election cycle in Ohio. In 1990, the North Carolina Republican Party and the Jesse Helms for Senate campaign engaged in vote caging by sending 44,000 postcards to black voters, giving them incorrect information about voting and threatening them with criminal prosecution. The plan was designed to intimidate and threaten black voters, and the postcards that came back as undeliverable could easily have been used to compile a caging list. Fortunately, the scheme was uncovered just prior to the election as DOJ took swift action, sending the FBI out immediately to investigate. Even though the perpetrators of this vote suppression scheme were exposed before the election, DOJ went ahead with a post election prosecution. The Bush I Justice Department, where I served at the time as a federal prosecutor of voting discrimination cases, filed a federal lawsuit against the GOP and Helms' campaign and obtained declaratory and injunctive relief in the form of a consent judgment and decree.

Vote Caging in Ohio 2004:

Contrast that aggressive nonpartisan law enforcement action with what the current Bush Justice Department did about such voter suppression efforts in Ohio in 2004. That year, when the Ohio Republican Party was sued by voters prior to the election to stop what appeared to be a similar vote caging scheme in progress, the Bush II Justice Department took immediate action. But they did not file a lawsuit to protect voting rights and stop the vote caging. Instead, led again by attorneys Hans von Spakovsky and Brad Schlozman, DOJ intervened in a highly unusual manner, coming to the defense of the Ohio GOP's efforts and by writing a letter to the federal judge overseeing the case and coming to the defense of the Ohio's GOP efforts. The federal judge appears to have ignored the letter, which was totally unsolicited and contrary to the Department's tradition of avoiding intervention in pre-election litigation.

It's one more example of how, under this Administration, with the likes of von Spakovsky and Schlozman calling the shots, the Justice Department's law enforcement program became overtly political. Even worse, this politicization perverted its mission of defending the right to vote. The new Attorney General has quite a task on his hands, because what we have seen in recent years has been unprecedented: the resources of the federal government being used to thwart and attack the voting rights of Americans and all for partisan political purposes.

Vote Caging In Other Battleground States

And it was not just in Ohio that vote caging efforts were attempted in 2004 by the Republican Party. There is evidence that caging lists were assembled in Florida, Ohio, and Pennsylvania during the 2004 elections, possibly intended as the basis for massive voter eligibility challenges. The Florida incident made headlines again earlier this year during Congress's investigation into the firing of several U.S. Attorneys, when allegations resurfaced that Tim Griffin, the former RNC opposition researcher then serving as an interim U.S. Attorney in Arkansas, had been involved in an effort to cage voters in Jacksonville. In June, Senators Whitehouse and Kennedy called for a Justice Department investigation into allegations that Griffin and others at the RNC may have

engaged in caging during the 2004 elections. To my knowledge, DOJ failed to respond to these inquiries. Even more troubling, DOJ does not appear to have undertaken a single prosecution, or even an investigation, of any of the 2004 vote caging schemes.

In Ohio, Florida, Wisconsin, Pennsylvania, and Nevada – all battleground states with significant minority populations living in urban communities – vote caging was the voter suppression method of choice for Republicans in 2004. Despite the sworn declaration of Deputy RNC Chair Maria Cino that the RNC has not "been involved in any efforts to suppress voter turnout," e-mails circulated among top RNC and Bush-Cheney campaign officials suggest otherwise. A document for use by state GOP officials in developing campaign plans worked on by Bush-Cheney campaign lawyer Christopher Guith provides a template of plans for vote caging. An e-mail from Guith declares "we can do this in NV, FL, PA, and NM because we have a list to run," referring to a plan to challenge absentee ballots using a caging list. Terry Nelson, Political Director of the 2004 Bush/Cheney campaign, was included on the e-mail.[2]

Vote Caging Schemes Involve The Intentional Suppression of Voting Rights

Those who perpetrate these caging schemes know full well the racially discriminatory nature of their efforts, and make every effort to cover their tracks and distance themselves from the vote suppression schemes they unleash. Thus, in another e-mail chain involving the vote caging in Ohio later enjoined by a federal judge, Guith, Tim Griffin and others discussed "the risk of having GOP fingerprints" on the caging lists.

As we enter another hotly contested, high stakes election cycle, there is reason to believe vote caging will once again be used illegally to suppress the black vote or the vote of other minority voters, for partisan gain. The recommendations of the Conyers report on how to stop vote caging have yet to be heeded. The RNC has shown that federal consent decrees are inadequate to stop vote caging from again and again rearing its ugly head.

DOJ Officials Who Supported Vote Suppression Schemes Have Not Been Held Accountable

Unfortunately, those at the DOJ who failed to stop – and in some cases actually supported – the voter suppression efforts in 2004 through vote caging and other schemes have not been held accountable. Instead, they've been rewarded with promotions for their partisan misdeeds. Alex Acosta, the Assistant Attorney General who, along with Hans von Spakovsky and Brad Schlozman, was responsible for sending the letter to the Ohio federal judge in defense of the vote caging scheme there, was appointed in May

[2] These emails and documents are available at: http://i172.photobucket.com/albums/w31/drational/Cino2.jpg, and http://www.epluribusmedia.org/features/2007/images/Allstates.jpg, and http://www.epluribusmedia.org/features/2007/documents/State%20Implementation%20Template%20III.doc.

2005 to the post of U.S. Attorney for the Southern District of Florida – a past and possibly future site for voting rights controversies. And the DOJ political appointee who likely drafted the letter to the Ohio federal court in support of the 2004 vote caging scheme, Hans von Spakovsky, has been nominated for the Federal Election Commission, the agency charged with overseeing the fair administration of our election laws.

With the stakes in the upcoming 2008 elections being so high, both major political parties have once again directed their efforts at combating alleged voter fraud (the GOP) and fighting alleged vote suppression schemes (the Democrats). Given the politicization of the DOJ, it is highly unlikely that we will see efforts to stop vote caging among the enforcement priorities of the Civil Rights Division. That's unfortunate, because it means that once again the burden to put an end to these tactics will be on private litigants. Congress can and should do something: hold hearings devoted exclusively to vote caging, bring in Party officials, and ask them under oath about these past efforts. Such hearings might have a chilling effect on those who were otherwise planning a new round of vote caging activities. And that would be a good outcome. Caging voters will continue to be an issue unless Congress enacts legislation making it clear what vote caging is and prescribes penalties for those who unfairly target voters using that technique. Failure to do so will likely produce more vote suppression efforts in 2008 through vote caging and other methods, and this will likely suppress the voting rights of minorities, overseas persons on active military service, and students registered at a parent's address.

Pending Vote Caging Legislation:

That is why I was pleased to see legislation introduced last week that will make vote caging illegal. Challenging a person's right to vote because a letter sent to him or her was returned as undeliverable would be illegal under a Senate bill introduced last week. U.S. Senator Sheldon Whitehouse (D-R.I.) joined 12 other senators to unveil legislation aimed at preventing the practice of "voter caging," a long-recognized voter suppression tactic which has often been used to target minority voters.

The Caging Prohibition Act would prohibit challenges to a person's eligibility to register to vote, or cast a vote, based solely on returned mail or a caging list. The bill would also mandate that anyone who challenges the right of another citizen to vote must set forth the specific grounds for their alleged ineligibility, under penalty of perjury.

DOJ's Partisan and Selective Enforcement of the National Voter Registration Act (NVRA):

Vote Caging is merely one weapon in the arsenal of those who want to suppress the right to vote. Other schemes also exist, including the method of enforcing (or not enforcing) the National Voter Registration Act (NVRA).

At the outset, I should note that the *main* purpose of the NVRA, or the motor voter law as it is sometimes called), was to make it easier for people to become registered to vote. Among other things, the NVRA requires states to designate as a place of voter

registration all offices in the State that provide public assistance. At a minimum, each public assistance office must distribute voter registration forms, assist applicants in completing forms, and accept completed forms and forward them to appropriate election officials. Under Section 7 of the NVRA, each public assistance office must distribute voter registration materials with each application for assistance, and each renewal of benefits or change of address. And officials in these public assistance offices must inquire of applicants in writing if they want to become registered to vote, inform the applicant in writing that a decision whether to register will not affect the amount of public assistance they will receive, and provide assistance to applicants in filling out the voter registration forms to the same degree the agency does with all other forms.

Unfortunately, states are failing to meet their obligations under the NVRA. Take for example, New Mexico. Although there were over 559,000 applications for or re-certifications for Food Stamps in that state from 2001 and 2002, all of whom should have been offered voter registration, the public assistance offices reported registering only 3719 persons during this period. But New Mexico is not alone. Between 1995 and 2006, there has been an 80% decrease in voter registrations from public assistance agencies.

The political stakes in registering low-income voters are huge. The Election Assistance Commission's biennial report to Congress on the impact of the NVRA for 2005-2006 found that 16.6 million new registration applications were received by state motor vehicles agencies while only 527,752 applications came from public assistance offices - a 50 percent drop from 2003-2004. Two organizations, Demos and Project Vote, did a study of voter registrations over the ten year period from 1995 to 2004. What they found was a decline in registrations coming from public assistance agencies. The decline was a dramatic 59%! Demos senior policy analyst Scott Novakowski has noted that that many politically significant states - Arizona, Florida, Maryland, Massachusetts, Missouri, New Jersey, Ohio and Virginia - were largely ignoring the registration requirement. Congressman John Conyers and 29 other representatives asked Attorney General Alberto Gonzales to look into this. To my knowledge, they have not received a response.

Since then, work by Demos, Project Vote, and the Lawyers' Committee has shown that the implementation of simple procedures and a system of monitoring and accountability can dramatically increase the number of public assistance voter registrations. For example, after working with these groups to re-implement the law, North Carolina's public assistance agencies have registered over 20,000 voters in public assistance agencies since January 2007. To put this number in context, such agencies in the state only registered 11,607 voters at public assistance agencies in the *entire preceding two-year period.*

Lack of DOJ Enforcement of NVRA

A number of groups, including Demos, Project Vote, the Lawyers' Committee for Civil Rights Under Law, and ACORN, have been trying to work with DOJ to enforce the public assistance provisions of the NVRA for years. In late 2004 voting rights groups met

with the Justice Department's top Voting Section staff in Washington – including Hans Von Spakovsky, counsel to the assistant attorney general overseeing the Voting Section, and Voting Section Chief Joseph Rich, to discuss enforcing the public assistance requirement. At that meeting and in a series of memos, these organizations presented von Spakovsky, who helped set and oversaw voting rights policy, with evidence of states' noncompliance with and/or poor implementation of the public assistance provisions of the NVRA. The meeting was polite, participants said, but little came of it. This is not surprising, as Schlozman and von Spakovsky have been repeatedly cited by numerous DOJ attorneys as blocking numerous voting rights matters for partisan purposes.

Mr. Rich was a Civil Rights Division career attorney for 37 years and chief of the Voting Section for six years until he resigned in April 2005, citing politicization of voting rights enforcement. Mr. Rich recently recalled that meeting about the NVRA's voter registration requirements. Von Spakovsky – who had become his de facto boss – decided to ignore that part of the law, Mr. Rich said. Instead, Mr. Rich observed, Mr. von Spakovsky was interested in only one line in the statute that allowed the DOJ to pressure states to purge voter rolls. As Mr. Rich was quoted in a recent press interview: "Four months before I left, in 2005, Von Spakovsky held a meeting where he said he wanted to start an initiative for states we want to purge… Their priority was to purge, not to register voters. That was January. I left in April." Mr. Rich added: "To me, it was a very clear view of the Republican agenda." "The Republican agenda is to make it harder to vote: purge voters and don't register voters."

The change in DOJ's enforcement priorities under the NVRA is perhaps best illustrated by two Voting Section lawsuits filed against Missouri election officials. In 2002, the DOJ alleged St. Louis had improperly purged 50,000 voters from registration lists. St. Louis ended up settling the dispute with DOJ. In 2005, however, the Department's sued the State claiming that it wasn't sufficiently purging voter rolls. Meanwhile, local community group ACORN had taken it upon themselves to initiate the litigation process against the state in August 2007 by sending a letter to state officials documenting significant violations of the NVRA's public assistance registration provision.

Congressional Oversight Hearings May be Spurring DOJ To Take More Aggressive Enforcement of NVRA:

The nonprofit group Demos recently obtained the 18 letters referenced by DOJ in an October NPR story on their selective enforcement of voting rights laws. Five states received letters requesting that they submit information on additional agencies designated under the NVRA. Six states received letters because they reported no voter registrations received from public assistance agencies and another seven received letters because they were "among the ten states with the lowest percentage of voter registration applications received from offices providing public assistance." I believe that DOJ only sent letters to seven of these latter 10 states. Depending on how states with the same percentage are treated in the ranking, at least Florida, Texas and Virginia should have also received letters under DOJ's criteria. It's not clear why these states were not sent letters.

It should be noted, though, that the criteria used by DOJ to select the states that received

letters was based on a narrow, and somewhat misleading, indicator of noncompliance. If they are truly interested in enforcement, DOJ needs to investigate a much wider range of factors. Let me explain.

In investigating NVRA compliance, an assessment should be based on a number of different figures and data sources. One useful starting point would be to begin with the number of registrations reported to the EAC and compare that number to the size of their public assistance caseloads. This helps give context to the raw numbers. For example, if a state reports 1000 public assistance registrations, this means something different in a state with a caseload of 2000 clients compared to a state with a caseload of 1,000,000 clients. Voting rights advocates have been urging the EAC for quite some time now to collect public assistance caseload data from the states as part of their biennial report to Congress, so that they can report a more accurate measure of public assistance registration. EAC has not yet agreed to do so, as I understand it. In the meantime, such data are often available on states' public assistance agency websites.

It is also helpful to look at trends in EAC data over time. While public assistance registrations in most states have declined since implementation of the law in 1995, some states have experienced declines of 90 percent or more in the number of voter registrations in public assistance offices since that time. This to me is a strong indication that something is wrong. It's also helpful to compare the declines in public assistance registrations to trends in motor vehicle departments and overall registrations, to determine if the decline in registrations is reflective of a statewide trend or such decline is more pronounced in public assistance offices.

One final measure of determining public assistance voter registration opportunities is to visit the public agencies themselves to inquire whether the offices have applications on site and whether they are being offered to clients. This is quite a burden on resources, however, and thus is an approach that should be taken by either the EAC or the Justice Department.

Not only is using a single indicator inadequate, but there is also a problem with the criteria that DOJ uses to determine where to send letters seeking information about registration under NVRA. As I understand DOJ's current procedures, they select states based on the % of 'categorized' applications in a state that came from public assistance offices. Since some states, such as New Mexico, do a poor job reporting "categorized" applications, the percentage of this total coming from public assistance agencies actually looks fairly large even though the raw number is unrealistically small for a state following the law. For example, in the 2005-2006 EAC report, New Mexico actually showed that 20% of their categorized registrations came from public assistance agencies. What this figure doesn't show is that the state only reported registering 1,200 voters in a two-year period. More comprehensive analyses and investigations by Demos and other groups showed clear non-compliance.

Noncompliance with NVRA Section 7 is by no means limited to the states that received letters from DOJ, and it would be unfortunate if the omission of other states from this round of letters from DOJ to the States is taken to infer that they are in compliance. The chief of DOJ's Voting Section was recently called on to testify in front of Congress. Oversight hearings such as this one, and other oversight hearings into the operations of DOJ, are the only way to eliminate the politicization of DOJ root and branch. I would note that such hearings already seem to be having a positive effect, as DOJ, for the first time in a long time, is being held accountable for the selective enforcement of voting rights laws. Even more positive, turning the spotlight onto DOJ's voting rights enforcement abuses may have produced the 18 letters sent earlier this year inquiring about enforcement of the NVRA. Letters are a start, but much more enforcement by DOJ needs to be done and in far many more states than the ones who received letters. One thing we should

all be able to agree on: the voting rights of all Americans, especially those who are poor or have low income, deserve vigorous protection.

Attachment A

Vote Caging Activities in the 1980's:

New Jersey 1981

The notorious 1981 New Jersey gubernatorial election between Republican Tom Kean and Democrat Jim Florio provided a window into voter intimidation and suppression techniques, vote caging in particular. The Republican National Committee used vote caging to compile a list of more than 45,000 voters, mostly Black and Latino, to challenge at the polls. Republican "ballot security" teams hired armed guards with armbands to police polling places.

Kean won by less than 2,000 voters, but only after an almost month-long recount. Both state and county prosecutors launched investigations into voter intimidation. A federal court eventually entered a consent decree that prohibited the RNC from engaging in vote caging.

Louisiana 1986

In the 1986 election, the RNC used vote caging to compile a list of 31,000 voters, mostly black, that it attempted to have thrown off the voter rolls. At the time, Kris Wolfe, the Republican National Committee Midwest political director, wrote Lanny Griffith, the committee's Southern political director, "I know this is really important to you. I would guess this program would eliminate at least 60,000 to 80,000 folks from the rolls. If this is a close race, which I assume it is, this could keep the black vote down considerably." Following this caging scandal, both parties agreed to amend the original 1982 consent decree to require that the RNC would submit to the court any ballot security plan for approval.

The 1990's: Vote Suppression Through Caging Continues

North Carolina 1990

In October of 1990, when the black Democratic candidate for U.S. Senate, Harvey Gantt, was leading incumbent Jesse Helms in the polls, the Helms for Senate Committee and the North Carolina Republican Party developed a vote caging scheme.
As described above, according to a lawsuit brought by the Bush I Justice Department, on October 29, 2004, at least 44,000 postcards were sent, without a disclaimer that they were paid for by a political party, exclusively to black voters in North Carolina. The postcards served two purposes; first, they were intended to directly intimidate and threaten black voters and to give them false information about voting; second, and more insidiously, the undelivered postcards would be used to create a caging list of black voters with the intent of challenging them at the polls. According to the suit, "This effort was terminated shortly before the election and subsequent to the initiation of an investigation … by the United States Department of Justice." Later a consent decree was entered against defendants that allowed the court oversight until 1996.

The 2004 Elections: Vote Caging Suppression At Full Bore

Florida 2004

The 2000 election in Florida raised the stakes and also showed the effectiveness of disenfranchising black voters in a close election. Both parties trained their sights on the state again in 2004 and vote caging became an integral part of the Republican Party plan in the Sunshine State.

In the late summer and fall of 2004, the Republican National Committee developed a caging list of voters in predominantly black areas of Jacksonville, Florida. The scheme came to light when Tim Griffin, then the Research Director and Deputy Communications Director for the RNC, mistakenly sent an e-mail with the subject line "caging" to an e-mail address at georgewbush.org, a political parody website whose operators sent it to the press. Griffin had meant to send the list to a Republican operative with an e-mail address at georgewbush.com, the official Bush campaign e-mail suffix. Griffin's e-mail contained an Excel spreadsheet "Caging-1.xls" containing the names of 1,886 Florida voters, mostly black, including the names of black soldiers deployed abroad.

As the BBC reported, "An elections supervisor in Tallahassee, when shown the list, told Newsnight: 'The only possible reason why they would keep such a thing is to challenge voters on Election Day.'" A recent analysis of the names on the caging list showed that the Jacksonville caging preferentially selected blacks and excluded whites. Griffin was later appointed an interim U.S. Attorney in Arkansas. The White House refused to submit him to the Senate for confirmation out of concerns over his involvement in vote caging, as Monica Goodling verified in her testimony before the Senate Judiciary Committee.

Nevada 2004

In Clark County Nevada, the former state Republican Party executive director, Dan Burdish, attempted to cage 17,000 voters weeks prior to the 2004 election. The voters had been put on an "inactive" list when mail sent to their addresses was returned. The *Las Vegas Review Journal* reported, "Burdish said he only targeted Democratic voters because 'I'm a partisan Republican, I admit it."

Local election administrators objected to the challenge, including Registrar of Voters Larry Lomax. As reported by the *Review Journal*, "Lomax said he can see no legitimate reason why Burdish would challenge the voters. 'The law already tells us what to do with inactive voters,' Lomax said. 'The law provides a remedy for these people, and I'd guess that the only point in a challenge would be an attempt to intimidate voters.'"

Ohio 2004

More so than Florida, Ohio was ground zero for the hotly contested 2004 election – and also a hotbed of voter intimidation. The Ohio Republican Party developed a caging scheme and identified 35,000 newly registered voters in urban areas, mostly black, who either refused to sign for letters from the Republican party or whose letters came back

undeliverable. An attorney for the Ohio Republican Party even admitted that the plan was to use the returned letters from minority neighborhoods to challenge voters.

Prior to Election Day, when the caging list would be used to challenge voters at the polls, the caging scheme was challenged in court on two fronts. In New Jersey, voters filed suit against the RNC for violating the 1982 consent decree. The RNC argued that the consent decree only applied to it, not the Ohio Republican Party, which planned to supply the challengers, and therefore was inapplicable to the Ohio election. The federal court rejected that argument, and, on Nov. 1, 2004, ordered Republicans in Ohio not to proceed with the caging scheme on Election Day.

Meanwhile, in Ohio, voters filed suit to challenge the Ohio law permitting political parties to post challengers in polling places on Election Day – challengers armed with caging lists.

While the court battles were playing out in New Jersey and Ohio in the days and hours leading up to the 2004 election, with the rights of minority voters hanging in the balance, did the Department of Justice step in to enforce the Voting Rights Act? Unsurprisingly for anyone who's followed the ongoing scandal over the politicization of the Civil Rights Division, the answer is "of course not." Perversely, the Justice Department sent a letter to the Ohio federal judge overseeing the lawsuit to tell her that the challenge statute that was to be used as part of the vote caging scheme was perfectly fine.

Assistant Attorney General Alex Acosta's Oct. 29, 2004 letter to District Judge Susan Dlott was unusual not just in that it attempted to offer legal cover for the same practices that 12 years earlier DOJ had sued to stop, but also because it was nearly unprecedented for DOJ to intervene in an election eve case in which it had not previously participated, its involvement was unsolicited, and it was not a party,. (Acosta's letter was sent just a few days after then-U.S. Attorney Bradley Scholzman filed the now-infamous indictments against the four ACORN workers in Missouri.)

Judge Dlott refused to heed the advice of the Assistant Attorney General, found that permitting the challenges would have a racially discriminatory impact, and issued an order enjoining the Republican Party from placing challengers at the polls.In the end, the caging scheme was stymied. (For a thorough discussion of other voter intimidation techniques that succeeded, see *Preserving Democracy: What Went Wrong in Ohio*, Status Report of the House Judiciary Committee Democratic Staff, January 5, 2005 [a.k.a. "the Conyers Report"].)

Pennsylvania 2004

The Pennsylvania GOP targeted for caging only voters in Philadelphia, which is approximately 45% black, according to Census data. Voters in other parts of the state, which is 85% white, were not caged.

The party compiled a caging list of 10,000 returns from a Republican mailing purporting to welcome new registrants in Philadelphia to the political process, and then announced plans to challenge those 10,000 voters on Election Day. The Republican speaker of the state House admitted the campaign tactics were intended to "keep down" the vote in Philadelphia.

As *The Inquirer* reported, "State Republicans released additional details yesterday from their list of 10,000 letters to Philadelphia voters that they said were returned as undeliverable. They said they would use this list to challenge voters at the polls today - a

type of challenge similar to one that federal judges have barred Republicans from using today in Ohio."[25]

According to the *Bucks County Courier Times*: "Election officials and other observers, however, say the 7.6 percent rate of returned letters isn't surprising in a large city with many transient, low-income neighborhoods. 'This is a mobile population,' said Randall Miller, who teaches a course on elections at St. Joseph's University. 'Some people are living in places where they don't really have addresses, [such as] shelters. They have every right to vote.'" When the media asked the GOP for the list, the party initially refused but later provided just six names and addresses.

Wisconsin 2004

The Wisconsin Republican Party announced the Saturday before the 2004 election plans to challenge 37,180 voters on a caging list developed by the party. The Wisconsin GOP targeted for caging only voters in Milwaukee, which is approximately 40% black and 55% minority (black and Hispanic), according to Census data. Voters in all other parts of the state, which is 91% white, were not caged.

In this caging scheme, the party used a commercial software program to compare addresses on voter registration cards to a postal service database of known addresses, and then announced plans to challenge 37,180 voters at the polls whose addresses, the party claimed, didn't match.

The non-partisan City Attorney called the plan "outrageous." It was. Of the caged list, 13,300 of the addresses simply listed incorrect apartment numbers. Some 18,200 more cases stemmed from the lack of an apartment number for a resident of an existing building.

Of the remaining 5,000 or so addresses, the City Attorney's office found hundreds actually did exist, and many of the other non-matches were likely due to clerical errors. Had the plan been allowed to go forward, thousands of legally-registered, apartment-dwelling black voters would have been challenged because of a clerical error involving apartment numbers. The attempt was stopped by the City Attorney and Election Commission.